

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

| | | |
|----------------------|---|-----------------------------|
| In the matter of: |) | |
| |) | |
| Bruce Willis |) | |
| |) | Docket No. CWA-10-2004-0061 |
| |) | CONSENT AGREEMENT |
| Blaine County, Idaho |) | AND FINAL ORDER |
| |) | |
| |) | |
| Respondent. |) | |
| |) | |
| _____ |) | |

1. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA, Region 10.

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and Bruce Willis (“Respondent”) hereby agrees to, the issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes final.

2.2. A concise statement of the factual basis for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except as authorized by a permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a point source that is not authorized by such a permit constitutes a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3.2. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.3. Upon information and belief, in Fall 2003, and at times more fully known to Respondent, Respondent and/or persons acting on his behalf, discharged dredged and/or fill material into wetlands and below the ordinary high water mark of a tributary to the Big Wood River located in S.05, T.2N., R.18E. near Hailey, Blaine County, Idaho. The unauthorized activity occurred while constructing a crossing to an island within the tributary and while leveling and sodding the island. During this time period, Respondent placed dredged and/or fill material into approximately 0.5 acres of wetlands and below the ordinary high water mark of the

tributary.

3.4. The property described in paragraph 3.3 above contains wetlands and an unnamed spring-fed stream that is tributary to the Big Wood River. These wetlands and the stream are “navigable waters” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

3.5. Upon information and belief, Respondent and/or persons acting on his behalf used heavy equipment to place the dredged and/or fill material into wetlands and stream. The heavy equipment used to fill these waters is a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

3.6. The dredged spoils and/or fill material that Respondent and/or persons acting on his behalf caused to be discharged includes, among other things, dirt, spoil, rock, sand and sod, each of which constitutes a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

3.7. By causing such dredged spoils and/or fill material to enter waters of the United States, Respondent has engaged, and is continuing to engage, in the “discharge of pollutants” from a point source within the meaning of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

3.8. Respondent’s discharge(s) of fill material described in paragraph 3.3 above was not authorized by any permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1312 or 1314, and Respondent is therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

IV. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the nature, circumstances, extent, and gravity of the alleged violations, Respondent's economic benefit of noncompliance and ability to pay the proposed penalty, and other relevant factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is in the amount of TWENTY ONE THOUSAND DOLLARS (\$21,000).

4.4. Respondent consents to the issuance of the Final Order recited herein, to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "United States Treasury" and shall be delivered to the following address:

Mellon Bank
EPA Region 10
P.O. Box 360903M
Pittsburgh, Pennsylvania 15251.

Respondent shall note on the check the title and docket number of this case.

4.6. Respondent shall serve photocopies of the check described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

U.S. Environmental Protection Agency
1435 N. Orchard Street
Boise, Idaho 83706
Attn: Carla Fromm.

4.7. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under the Clean Water Act. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order contained herein.

b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay (in addition to any assessed penalty and interest) attorney fees, costs for collection proceedings, and a quarterly

nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. Except for the payment described in paragraph 4.5, all submissions required by this CAFO shall be made to:

U.S. Environmental Protection Agency
1435 N. Orchard Street
Boise, Idaho 83706
Attn: Carla Fromm.

4.10. The penalties described in paragraph 4.3 of this CAFO shall represent civil penalties assessed by EPA.

4.11. Except as described in paragraph 4.8 of this CAFO, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and to appeal the Final Order contained herein.

4.13. The provisions of this CAFO shall bind Respondent and his agents, servants, employees, successors, and assigns.

STIPULATED AND AGREED:
BRUCE WILLIS

Ned Williamson
Attorney for Bruce Willis

Dated: _____

U.S. ENVIRONMENTAL PROTECTION AGENCY

Mark A. Ryan
Assistant Regional Counsel
For Complainant

Dated: _____

V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations and permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Water Resources has been given an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice to inform the public of its intent to assess an administrative penalty against Respondent and to invite public comment in accordance with 40 C.F.R. § 22.45. More than 40 days have elapsed since the issuance of this public notice, and EPA has received no petitions to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this ____ day of _____, 2004.

RONALD A. KRIEZENBECK
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement and Final Order" was sent to the following persons, in the manner specified, on the date below:

Original and one copy, hand-delivered:

Carol Kennedy, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

A true and correct copy, by certified mail, return receipt requested:

Ned Williamson
Williamson Law Office
115 S. 2nd Avenue
Hailey, Idaho 83333.

Dated: _____

Melissa Whitaker
U.S. EPA Region 10

CONCURRENCE PAGE

5.6. This Final Order shall become effective upon filing.

SO ORDERED this ____ day of _____, 2004.

RONALD A. KRIEZENBECK
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 10

| CONCURRENCE | | | |
|-------------|-----------|------------|-------------|
| Name | Mark Ryan | Meg Silver | Carla Fromm |
| Initials | | | |
| Date | | | |

| CONCURRENCE | | | |
|-------------|-----------|--------------|-------------|
| Name | Steve Roy | Gary Voerman | Rick Parkin |
| Initials | | | |
| Date | | | |